

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ABLE BUILDING MAINTENANCE & SERVICE CO., INC.

and

Case 4--CA--13664

LOCAL 1041, LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 19 April 1983, the General Counsel of the National Labor Relations Board issued a complaint 21 June 1983 against Able Building Maintenance & Service Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act.

The complaint alleges that since at least 1 June 1982, the Union has been designated exclusive collective-bargaining representative of the Company's employees in a unit found appropriate,¹ and since 2 March 1983, the Union has been recognized as the designated exclusive collective-bargaining representative of the above-described unit by the Company. The complaint further alleges that on or about 2 March 1983 the Union and the Company reached full and complete agreement with respect to terms and conditions of employment of employees in the unit found appropriate to be incorporated in a collective-bargaining agreement between the Union and the Company, and that

¹ The unit consists of all janitorial and maintenance employees employed by the Respondent at the Naval Aviation Supply Office, 700 Robbins Ave., Philadelphia, Pennsylvania, but excluding all other employees, guards and supervisors as defined in the Act.

on 24 March 1983, the Union requested the Company to execute a written contract embodying said agreement. Finally, the complaint alleges that since 4 April 1983, until on or about 19 May 1983, the Company failed and refused to execute a written contract embodying said agreement and that, since on or about the week of 23 May 1983, the Company has refused to abide by the terms of the collective-bargaining agreement. The Company failed to file an answer to the complaint.

On 22 August 1983 the General Counsel filed a Motion for Summary Judgment. On 12 September 1983, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The Company did not file a response to the Notice to Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations provides:

The respondent shall, within 10 days from the service of the complaint file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Company specifically stated that unless an answer to the complaint was filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to

be admitted to be true and may be so found by the Board.'" No answer has been filed as of the date of the filing of the Motion for Summary Judgment, and the Company has failed to file a response to the Notice to Show Cause in which it could have attempted to explain its failure to answer.

No good cause for failure to file an answer having been shown, in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted. Accordingly, we find as true all the allegations of the complaint and grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, an Ohio corporation with its principal office at 1819 Kammer Ave., Dayton, Ohio, is engaged in providing janitorial services. At all times material, the Company has been engaged in providing such services for the Department of the Navy at the Defense Industrial Supply Center, Naval Aviation Supply Office, 700 Robbins Ave., Philadelphia, Pennsylvania. During the past year, the Company provided services valued in excess of \$50,000 to the Department of the Navy outside of the State of Ohio. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On or about 2 March 1983 the Union and the Company reached full and complete agreement with respect to the terms and conditions of employment for the following unit of employees:

All janitorial and maintenance employees employed by the Company at the Naval Aviation Supply Office, 700 Robbins Ave., Philadelphia, PA but excluding all other employees, guards and supervisors as defined in the Act.

The above-described unit of employees constitutes a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b). Since at least 1 June 1982 and at all times material, the Union has been designated exclusive collective-bargaining representative of the Company's employees in the unit described above, and since on or about 2 March 1983, the Union has been recognized as such by the Company.

On or about 24 March 1983, the Union requested the Company to execute a written contract embodying the agreement reached on or about 2 March 1983.

From on or about 4 April 1983 until on or about 19 May 1983 the Company failed and refuse to execute a written contract embodying the above-described agreement. Further, since on or about the week of 23 May 1983, the Company has refused to abide by the collective-bargaining agreement. We find these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act.

Conclusions of Law

By refusing on or about 4 April 1983 until on or about 19 May 1983 to execute a written contract embodying the collective-bargaining agreement reached on 2 March 1983, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

By refusing on or about the week of 23 May 1983 to abide by the above-described collective-bargaining agreement, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the Act, we shall order it to cease and desist, and take certain affirmative action designed to effectuate the policies of the Act. We shall order that the Respondent execute the written contract as requested by the Union to the Respondent on 24 March 1983, and comply (if it has not already done so) with its terms retroactively to the contract's effective date. We shall also order that the Respondent reimburse all employees covered by the contract for the loss of any wages and benefits which would have accrued to them under the contract if signed. Such reimbursements shall be computed in accordance with Ogle Protection Service, 183 NLRB 682 (1970), together with interest as computed in Florida Steel Corp., 231 NLRB 651 (1977). See generally, Isis Plumbing, 138 NLRB 716 (1962). If the agreed-upon contract included employee benefit funds, additional amounts should be computed as prescribed in Merryweather Optical Co., 240 NLRB 1213, 1216 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Able Building Maintenance & Service Co., Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to sign the collective-bargaining agreement reached between it and the Union, Local 1041, Laborers' International Union of North America, AFL--CIO, as requested on 24 March 1983, covering the wages, hours, and terms and conditions of employment of the employees in the following unit:

All janitorial and maintenance employees employed by Respondent at the Naval Aviation Supply Office 700 Robbins Ave., Philadelphia, PA but excluding all other employees, guards and supervisors as defined in the Act.

(b) Failing or refusing to comply with the terms of the aforesaid collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Execute a written contract embodying the collective-bargaining agreement, as requested by the Union on 24 March 1983.

(b) Give effect retroactively to the provisions of the aforesaid collective-bargaining agreement, and in the manner set forth in the section of the Decision entitled the "'Remedy,'" make whole the employees in the appropriate unit for any losses in wages and benefits they may have suffered by reason of Respondent's failure to sign and comply with the agreement.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Philadelphia, Pennsylvania copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided

² If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

29 February 1984

Don A. Zimmerman, Member

Robert P. Hunter, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to sign the collective-bargaining agreement reached between us and the Union, Local 1041, Laborers' International Union of North America, AFL--CIO, as requested, on 24 March 1983, covering the wages, hours, and terms and conditions of employment of our employees in the following unit:

All janitorial and maintenance employees employed by the Company at the Naval Aviation Supply Office, 700 Robbins Ave., Philadelphia, Pennsylvania, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to comply with the terms of the aforesaid collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL sign the collective-bargaining agreement submitted by the Union on 24 March 1983.

WE WILL give effect retroactively to the provisions of the aforesaid collective-bargaining agreement, and WE WILL make whole our employees for any losses in wages and benefits they may have suffered by reason of our failure to sign and comply with the agreement, plus interest.

ABLE BUILDING MAINTENANCE &
SERVICE CO., INC

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1 Independence Mall, 7th Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone 215--597--7643.